IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 9936 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARBHUBHAI NATHUBHAI DHOLI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 9936 of 2003
MR HR PRAJAPATI for Petitioner No. 1
MS MITA PANCHAL Ld. AGP for Respondent No. 1-3
MS PJ DAVAWALA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA
Date of decision: 25/09/2003

ORAL JUDGEMENT

By way of this petition, the petitioner has challenged the order passed on 5.6.2003 by the District Magistrate, Surat in exercise of powers under sub-section 2(a) of sec. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act" for short) directing the detention of the petitioner and petitioner came to be detained in pursuance of the said order on the same day.

The facts reveal that a checking and inspection

was carried out by concerned officers at Lalkunj Industrial Society, Plot No. 47, GIDC, Pandesara, Surat and it was found that without any authorisation, the petitioner was indulging in selling of blue kerosene which was essential commodity and for which the Government directed Control Orders for the purpose of distribution of kerosene amongst the entitled persons on subsidies rates. It was alleged that this blue kerosene was turned in white one by chemical process and the petitioner was selling the same in the open market with higher rates and, therefore, on the same day after drawing the panchanama, a bulk of kerosene of 3728 litres i.e. blue kerosene an essential commodity was seized. The officers thereafter prepared panchanama which is placed on record. After carrying out this inspection on 3.2.2003, a statement of the petitioner came to be recorded on 12.3.2003 where the petitioner admitted to have obtained blue kerosene and converted the same in white one and sold the same at higher rates in open market. Relying on the above mentioned facts upon documents like seizure memo, panchanama, statement of the petitioner and other relevant papers, the detaining authority - District Magistrate, Surat, in this case, passed the detention order after satisfying himself that the petitioner was acting in a manner prejudicial to the maintenance of supply commodity essential to the community. The order came to be passed on 5.6.2003.

Ld. Advocate Mr HR Prajapati for the petitioner, ld. AGP Ms. Panchal for the respondents no. 1,2 and 3 and ld. Addl. Central Government Standing Counsel Ms. Davawala for respondent no. 4 were heard at length. Affidavit in reply filed on behalf of the State Government by the Deputy Secretary, as placed on record by ld. AGP is taken into consideration. The affidavit in reply of under Secretary of Food, Department of Consumer Affairs, Food and Public Distribution, Central Government, as placed on record by ld. Addl. Central Govt. Standing Counsel, is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted on behalf of the respondents, the matter can be disposed of on the issue whether there was any delay in passing the order of detention so as to vitiates the order of detention. From the record and from the rival contentions, it is clear that the checking and inspection came to be carried out by the officers concerned on 3.2.2003, a panchanama was executed, bulk of kerosene was seized under the Essential Commodity Act. Thereafter, 12.3.2003, a statement of the

petitioner was also recorded where the petitioner admitted to have acted prejudicial to the maintenance of supply of essential commodity. The FSL report which is dated 23.5.2003 was also received in the month of May, even than the order came to be passed on 5.6.2003, therefore, it has been vehemently urged that this delay is not explained which is fatal for the further detention of the petitioner.

In detention matter, it is not necessary to wait till the report of Chemical Analyst for the reasons that a statement of the petitioner admitting incident recorded. A panchanama is also drawn to the effect that the kerosene which came to be seized from the petitioner was a blue colour kerosene, therefore, when the object of detention is always to see that the person may be immediately prevented from acting prejudicial to the maintenance of supply of essential commodity and from preventing him from indulging in the activity of black marketing, immediate action is imperative of law. The delay in passing the order in such circumstances would frustrate the entire object of legislation. Further the live -link between the incident complained of on which the assumption of repetitive tendency is based, and that the passing of the order itself is snapped by causing delay. Ld. advocate for the petitioner has relied upon a decision of this Court unreported delivered on 16.1.2003 in the matter of Nandlal Nanalal Tailee vs. State of Gujarat. In this view of the matter, the order of detention is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 5.6.2003 by the District Magistrate, Surat, under the PBM Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)
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